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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

NO. 517

ALLEN WILLIAMS,

Petitioner

V.

UNITED STATES OF AMERICA

Respondent

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. _____

Allen Williams,

Petitioner,

Vs.

United States,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Petitioner, an individual, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above cause on July 5, 1966, which affirmed the judgment against the Petitioner in the United States District Court for the Northern District of Texas, Amarillo Division.

Opinion Below

The opinion of the United States Court of Appeals for the Fifth Circuit, rendered July 5, 1966, and is appended at page 2a, infra.

Jurisdiction

The judgment for the Circuit Court of Appeals was entered on July 5, 1966. The jurisdiction of the United States Supreme Court is invoked under 28 U.S.C. Sec. 1254(1), and under Rule 37(b) of the Federal Rules of Criminal Procedure.

Questions Presented

1.

Whether the evidence is sufficient enough to prove that the petitioner did in fact transport or cause to be transported in interstate commerce the named women and whether the immoral purpose of the transportation, if any, existed prior to or concurrent with the transportation.

2.

Whether the Federal District Court,

which was upheld by the Court of Appeals, failed to properly charge the jury upon the essential elements which make up the offense charged and further erred in refusing to give the petitioner's requested instruction number one.

Statutes Involved

Title 18, U.S.C., section 2421 provides that whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any territory or possession of the United States, any women or girl for the purpose of prostitution, or debauchery, or for any other immoral purpose, or which intent and purpose is to induce, intice or compel such women or girl to become a prostitute or to give herself up to debauchery, or to engage in any immoral practice;

Section 52(b) of the Federal Rules of Criminal Procedure explains plain error and provides:

> "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."

Statement

Petitioner, Allen Williams is an individual, who was charged with the interstate transportation of a woman for immoral purpose from the State of New Mexico to the State of Texas, in particular, Amarillo, Texas. It is the petitioner's position that the testimony indicated that the woman was transported across a State Line, however, it was not at the request or knowledge of the petitioner as such and that he had no intent or purpose to induce, intice or compel the women to be a prostitute or give herself up to debauchery and that the prosecution failed to show that an immoral purpose of the transportation existed prior to or concurrent with the transportation. Page 35 and 36 of the record the prosecuting witness testified that when one Sammy Scott was leaving Clovis, New Mexico, going to Amarillo, Texas, that the petitioner got a ride and the prosecuting witness went along also.

The prosecuting witness was able to testify, See Pages 40 & 41, that she worked in Amarillo as a prostitute and that she also worked in Clovis, New Mexico as one, and in some manner was affiliated with the petitioner, but no purpose for the trip or intent on behalf of the petitioner was proved by the prosecution in their presentation of the case in the District Court.

It is the petitioner's viewpoint that the existence of the intent or purpose of the transportation must exist prior to or concurrent with the interstate trip of the victim. The trial court in his charge to the jury failed to charge upon this necessary element which goes to make up the offense charged. The petitioner objected to the charge of the court, but did not submit a requested written charge on the point, believing that the trial court would instruct on all the essential questions of law involved in this case, whether requested to do so or not. The requested instruction

number one is located on page 138 and 139 of the printed record of the case.

The Court of Appeals, Appendix C, infra, page 4a affirmed by Judgment on July 5, 1966.

Reasons for Granting the Writ

The Petitioner, Allen Williams, was convicted for unlawfully transporting or causing to be transported in interstate commerce two women, to-wit: Rosie Nell Walker and Paula Evans, females, for immoral purposes of engaging in the practice of prostitution. The Petitioner denies that the United States has proved that he in fact transported or caused the women to be transported in interstate commerce or that there was proven an immoral purpose of the transportation or that it existed prior to or concurrent with the transportation. The prosecution used as their main witness one of the women alleged to have been transported, Rosie Nell Walker. The only real evidence that the woman went with the petitioier from Clovis, New Mexico, to Amarillo, Texas, was that when she was

asked why she made the trip to Amarillo, she stated that she guessed that the petitioner wanted to leave Clovis. (See printed record, page 36)

With the exception of the testimony of Rosie Nell, the only testimony in the record concerning alleged transportation by the petitioner and the purpose for such transportation is to be found in the record as follows: At page 35 and 36 of the record, the prosecuting witness testified that when Sammy Scott was leaving Clovis to Amarillo, the petitioner got a ride over there with Sammy and that Rosie Nell went along also.

The gist of the offense of transporting a woman or a girl for immoral purposes is the "transportation." In Harms v. U.S., 272 F. 2d 748, the court said that the gravamen of the offense is the inducement or persuasion to travel in interstate commerce for the immoral purpose set forth in the act. The immoral acts are pursuits in themselves are the exclusive regulation of the police power of the

state where they are committed. The statute makes intent to transport the women in interstate for such immoral purpose an element of the crime. See also U.S. v. Jamerson,60 F.Sup. 281.

It is apparent that the government has proved that the petitioner knew and had dealings with the prosecuting witness, Rosie Nell Walker, prior to the trip from Clovis, New Mexico, to Amarillo, Texas, and they had such dealings subsequent to their arrival in Amarillo, Texas. No where does the record reflect that the petitioner forced, payed or any induced or coerced the prosecuting witness to get in the car and make the trip across the State Line.

In the case of Weaver vs. U.S., 11 F. 2d 603, at page 608, the Court stated that the rule is that if it is the duty of the trial court to give the instruction at the first instance, there is a legal presumption that the Court will do so and the defendant has a right to reply upon the presumption and file no written request.

In such a case the appellant is not charged with a cupable violation of the rule of the court or lack of diligence in complying with it, and a request made at the conclusion of the Court's charge is timely not withstanding the rule. See also Speiller vs. U.S., 3rd Circuit, 31 F. 2d 682, 683.

In the event that the Court should decide that the petitioner failed to properly point out to the Trial court that the failure to charge upon this essential element of the offense, we further respectfully submit that this omission to instruct upon all the essential questions of law involved in the case constituted plain error under rule 52(b), Federal Rules of Criminal Procedure. Under said rule, plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court. It is the feeling of the petitioner that this was a substantial right of the petitioner and would violate his due process of law.

In the case of U.S. vs. Atkinson, 297 U.S. 157, at page 160, the court states an exception to the rule where the petitioner would not object if it is fundamental error the Court of Appeal on its own motion should take notice of such error. The court stated that the failure of the trial court to guide the jury in this respect could may have well caused them to omit from consideration this branch of the case

When the Court in the present case submitted his charge to counsel for objections thereto, counsel presented to the court his special request for instruction number one. Printed Record, page 138. Same was by the Court refused. In the case of Eddington vs. U.S.,146 U.S. 361, the court gave the instruction concerning the elements of good character. Said instruction was in correct form. The Court there said:

". . .good character, when considered in connection with the other evidence

> in the case, may generate a reasonable doubt. The circumstances may be such that an established reputation for good character, if it is relevant to the issue, would alone create a reasonable doubt, although, without it the evidence would be convincing."

In that case, the Appeal Court reversed the Trial Court because of the error in failing to tell the jurors that character testimony may be such that it alone may create a reasonable doubt, although without it the evidence might be convincing. In this case the only incriminating evidence was given by the prosecuting witness, Rosie Nell Walker. The appellant, himself, denied every point of the case concerning complicity or responsibility of facts of prostitution of the two women involved.

It is the belief of the petitioner that the jury should have benefit of considering the testimony offered by the petitioner relative to the reputation of

the witness, Rosie Nell Walker, for truth and veracity as the credibility of the witness was directly in point and unless the jury would believe that the testimony was true, the government's case could fall.

It seems fundamental that this was a necessary charge to be given to the jury in order that they might know that their belief in this reputation testimony was sufficient to destroy any probative value in said testimony and sufficient to create the doubt requiring them to return a verdict of not guilty.

Conclusion

For the foregoing reasons, writ of Certiorari should be granted herein.

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August 30, 1966

Appendix A

Statutory Provisions

Title 18, U.S.C, Section 2421 states:

> Whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any territory or possession of the United States, any women or girl for the purpose of prostitution, or debauchery, or for any other immoral purpose, or which intent and purpose is to induce, intice or compel such women or girl to become a prostitute or to give herself up to debauchery, or to engage in any immoral practice;

Section 52(b) of the Federal Rules of Criminal Procedure explains:

> Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

Appendix B

In The

United States Court of Appeals

For the Fifth Circuit

NO. 22993

Allen Williams,

Appellant

versus

United States of America,

Appellee.

Appeal from the United States District Court for the Northern District of Texas

---

(July 5, 1966)

Before TUTTLE, Chief Judge, RIVES, Circuit Judge, and CHOATE, District Judge.

PER CURIAM: In this prosecution for violation of the Mann Act, 18 U.S.C.A. 2421, we conclude that the evidence was ample to warrant submission of the case to the jury. We find no error in the Court's charge or in the Court's refusal

to give the charge requested by the appellant's counsel.

The judgment is AFFIRMED.

APPENDIX C

UNITED STATES COURT OF APPEALS

For the Fifth Circuit

October Term, 1965

NO. 22993

D.C. Docket No. 2-185-Criminal Action

ALLEN WILLIAMS,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Northern District of Texas.

Before TUTTLE, Chief Judge, RIVES, Circuit Judge, and CHOATE, District Judge.

J U D G M E N T

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Texas, and was taken under submission by the Court upon the record and briefs on file;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

July 5, 1966.

Issued as Mandate:

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 517

ALLEN WILLIAMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. B) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on July 5, 1966 (Pet. App. C). On August 2, 1966, Mr. Justice Brennan extended the time for filing a

petition for a writ of certiorari to and including September 3, 1966, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support petitioner's conviction for violation of the Mann Act.

2. Whether the court erred in its charge to the jury.

STATEMENT

After a trial by jury in the United States District Court for the Northern District of Texas petitioner was convicted on a one-count indictment charging unlawful transportation in interstate commerce of two women so that they might engage in prostitution, in violation of 18 U.S.C. 2421 (R. 1, 142). Petitioner was sentenced to imprisonment for three years (R. 143). On appeal, the conviction was affirmed (R. 144, 157; Pet. App. C).

Evidence adduced at the trial showed that petitioner, also known as Junior Barnes, met Rosie Nell Walker, a 14-year old girl, shortly after Easter 1964 at Hobbs, New Mexico (R. 21-22, 96-97, 117). They traveled from Hobbs to Clovis, New Mexico, and returned to Hobbs the following day (R. 22, 101-102). During the trip to Clovis, petitioner told Rosie Walker that she was "his woman" (R. 23). At Hobbs petitioner and Rosie Walker met Paula Evans, petitioner's 32-year-old common-law wife (R. 24, 98-99, 117).

Rosie Walker testified that petitioner and Paula Evans took her to a Hobbs motel (R. 25). Rosie Walker's mother came to the motel and, with the assistance of Captain Palmer of the Hobbs Police Department, had her daughter brought home (R. 26-29). A few days later Rosie Walker was abducted from her home. Someone put a sack over her head, said, "We are going to get a lot of money now", and drove her to Clovis (R. 30-32). Petitioner was in the room in Clovis when the sack was removed from Rosie Walker's head (R. 32).

Petitioner, in the presence of Paula Evans, explained to Rosie how to "call in tricks" (engage in prostitution) and to "pull creeps" on them (crawl into a room and steal money from the wallet of a man being kept occupied by another prostitute) (R. 33-34). Rosie gave petitioner the money from her prostitution dates at Clovis since he said "all of his whores gave him his money" (R. 34-35). Paula Evans also filled prostitution dates and gave money to petitioner (R. 37-38).

About four weeks after Easter 1964 petitioner, explaining that his automobile had broken down, obtained a ride in the car of one Samuel Scott from Clovis to Amarillo, Texas (R. 6-8, 64, 104). The following day petitioner told Scott to pick up some things at a house in Clovis where Paula Evans and Rosie Walker were waiting (R. 9-10, 20). Scott said he did not know the two women were coming along until he and petitioner started putting things into the car (R. 15). Scott and his common-law wife then drove petitioner, Paula Evans, and Rosie

Walker to Amarillo (the interstate transportation charged in the indictment) (R. 11, 35-36). Rosie Walker said that the trip was made because "Junior (petitioner) wanted to leave Clovis" (R. 36).

Petitioner rented rooms in an Amarillo motel for Rosie Walker, Paula Evans and himself (R. 39). Petitioner said that he was going to get Rosie a job so she would have a "front" (R. 39). Rosie worked as a waitress for a few days, but continued to fill prostitution dates (at one of which petitioner was present), and gave the proceeds of these dates to petitioner (R. 40-41, 86-87). While in Amarillo Rosie saw Paula giving money to petitioner (R. 40).

Subsequently petitioner took Rosie Walker to Lubbock, Texas where she filled other prostitution dates and gave the proceeds to petitioner (R. 42). On June 10, 1964, a police officer, acting upon information from Rosie's mother, went to a Lubbock motel, recognized Rosie after petitioner denied knowing a Rosie Walker, and took her to the police station (R. 66-68).

Petitioner testified on his own behalf that he told Rosie he did not want to be bothered with her and that she should go home to her mother, but she nevertheless entered Scott's car to make the trip to Amarillo (R. 105). He denied that he had caused either Rosie or Paula Evans to engage in prostitution (R. 110). Petitioner admitted making false statements to an F.B.I. agent that the two women had traveled to Amarillo by bus some days after he had made the trip (R. 133-135).

ARGUMENT

1. The evidence detailed in our Statement, *supra*, refutes petitioner's contention that the proof was insufficient to show that he was responsible for the transportation of the women. The evidence disclosed that petitioner was the moving cause behind the transportation. He made the arrangements to move the two women from Clovis, and the jury could infer that it was his purpose to change the base of his prostitution operations from Clovis to Amarillo.

The evidence clearly demonstrated the immoral purpose of the trip. Just prior to being moved from Clovis, Rosie Walker and Paula Evans had engaged regularly in acts of prostitution for petitioner's pecuniary benefit. That course of conduct continued unabated immediately after the journey to Amarillo, and the jury could conclude that petitioner contemplated such a continuation.

2. The court did not err in its charge to the jury. As a whole (*Boyd* v. *United States*, 271 U.S. 104, 107), the charge plainly permitted the jury to find petitioner guilty only if the transportation was for purposes of prostitution. The charge referred to the statute as applying to whoever knowingly transports in interstate commerce any woman for the purpose of prostitution (R. 139). The court said that a guilty verdict was proper if the transportation of the two women was "* * * for an immoral * * * purpose and in order that they might engage in the practice of prostitution * * *" (R. 140). The

charge further admonished the jury to decide if the petitioner "* * * is responsible for the trip as made for this unlawful purpose, that is, the trip in interstate commerce for the purpose of prostitution * * *" (R. 142).

Nor did the court err in refusing to give petitioner's requested instruction number 1, set out in the margin.[1] Petitioner's reliance upon *Edgington* v. *United States*, 164 U.S. 361, is misplaced. In *Edgington* this Court held that an accused was entitled, on request, to an instruction that evidence of his good character could be considered by the jury together with all of the evidence in determining whether there was a reasonable doubt of guilt, and that it was improper to instruct the jury to consider such evidence only in cases of doubt. The present instruction dealt with reputation or character evidence relating not to the accused, but to a prosecuting witness. Evidence of an accused's good character may be so persuasive that it alone may create a reasonable doubt as to his guilt. But the same is not true of evidence of the bad reputation of a prosecuting witness, which is only one circumstance bearing upon that witness's credibility. In relation

[1] "In determining whether the government has proved its case beyond a reasonable doubt, you may consider the testimony offered by the defendant relative to the reputation of the witness Rosie Nell Walker for truth and veracity. It is substantive evidence and must be considered together with all of the other evidence in the case and that testimony alone, namely the reputation testimony, may in and of itself create the doubt in your minds sufficient upon which you should find the defendant 'Not Guilty'" (R. 138-139).

to witness Walker's testimony petitioner had the benefit of the court's general instruction that the jurors were the judges of the credibility of the witnesses (R. 142). It was within the court's discretion, however, to reject an instruction which would highlight one of many factors bearing upon the witness's credibility and appear to give the jury the impression that that factor was more important than the demeanor of the witness or the other circumstances bearing upon the credibility of her story.

CONCLUSION

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
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OCTOBER 1966

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